88-1268

No. 88-

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

JOHN E. MADDOX,
Petitioner,

vs.

AmSOUTH BANK, N.A.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

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sc pp

QUESTION PRESENTED

Comes now JOHN E. MADDOX in the above-styled cause (hereinafter referred to for convenience as "Petitioner") and petitions the Supreme Court for the United States of America for a Writ of Certiorari as to the following issue:

> CAN A TRIAL COURT DENY A MOTION TO COMPEL OUTSTANDING DISCOVERY GIVING AS GROUNDS FOR SAME THAT SAID MOTION WAS FILED AFTER THE DISCOVERY CUT OFF WHEN IN FACT SAID MOTION TO COMPEL WAS FILED DURING THE DISCOVERY PERIOD AND AMENDED TWICE PURSUANT TO THE MAGISTRATE'S ORDER; THE LAST AMENDMENT BEING FILED SHORTLY AFTER THE MAGISTRATE'S ORDER BEING ENTERED.

CERTIFICATE OF INTERESTED PERSONS

The counsel of record certifies that the following list of persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. John E. Maddox, Petitioner/Defendant
2. AmSouth Bank, N.A., Respondent
3. Charles H. Erwin, Esquire
   2252 Government Street
   Suite B
   Mobile, Alabama 36606
4. Richard L. Watters, Esquire
   Irvin J. Langford, Esquire
   HOWELL, JOHNSTON, LANGFORD & WATTERS
   Post Office Box 1643
   Mobile, Alabama 36633
5. Broox G. Holmes, Esquire
   M. Kathleen Miller, Esquire
   ARMBRECHT, JACKSON, DeMOUY, HOLMES, CROWE & REEVES
   Post Office Box 290
   Mobile, Alabama 36601
6. Honorable Alex T. Howard, Jr.
   United States District Judge
   for the Southern District of Alabama
   Southern Division
   United States Courthouse
   Mobile, Alabama 36602

7. Honorable Bert W. Milling, Jr.
   United States Magistrate
   United States Courthouse
   Mobile, Alabama 36602

8. Eleventh Circuit Court of Appeals

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No. 88-

In the Supreme Court of the United States

OCTOBER TERM, 1988

JOHN E. MADDOX,
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vs.

AmSOUTH BANK, N.A.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

OPINIONS BELOW

Order denying Petition for Rehearing and Suggestion of Rehearing In Banc dated October 24, 1988. Order denying Writ of Mandamus dated August 29, 1988. Order by Judge Howard affirming the Orders of the Magistrate dated August 5, 1988. Order of the Magistrate dated July 13, 1988. Order of the Magistrate dated June 23, 1988. Order of the Magistrate dated May 25, 1988.

JURISDICTION

This is an appeal from denial of Petitioner's Motion for Rehearing and Suggestion of Rehearing In Banc on October 24, 1988 by the Eleventh Circuit Court of Appeals (Appendix p. A1).

Under the Federal Rules of Civil Procedure, Rule 37 provides that a motion to compel may be filed to require a party to comply with Request for Production and for failure to answer interrogatories. Said rule does not contain a time limitation for filing such a motion or that the motion is to be denied solely because the magistrate requires additional supplementation or modification of the motion which caused the amended motion to be filed shortly after the designated cutoff time for discovery. No order was entered specifically dealing with time for filing of motions, except the one of January 28, 1988 stating same were to be brought in a timely manner (Appendix p. A49).

STATUTORY PROVISIONS IN QUESTION

Federal Rules of Civil Procedure, Rule 37.

Failure to Make or Cooperate in Discovery: Sanctions

(a) *Motion for Order Compelling Discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

. . . (2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make

a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) *Evasive or Incomplete Answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

STATEMENT OF THE CASE

(A) Course of Proceedings and Disposition of the Case

The original complaint in this case was filed on March 27, 1987 in the United States District Court for the Southern District of Alabama, Southern Division. The Plaintiff, AmSOUTH BANK N.A., failed to personally serve the Defendant, JOHN E. MADDOX, with the complaint and furthermore, failed to serve the complaint on JOHN E. MADDOX by certified mail. On June 16, 1987, the trial

court issued a discovery and scheduling order requiring all discovery to be completed by October 16, 1987. Upon Plaintiff's motion on September 14, 1987, the trial court entered an order for the Defendant, JOHN E. MADDOX, to be served by publication. Service by publication was effected through the months of October and November, 1987. The Defendant, JOHN E. MADDOX, filed an appearance on November 10, 1987 by filing a motion to dismiss and an answer to the complaint was filed on November 30, 1987. The Defendant, JOHN E. MADDOX, raised in his answer to the complaint several affirmative defenses including unconscionability and misrepresentation on the part of AmSOUTH BANK N.A., the successor bank of First National Bank of Mobile. The Plaintiff, AmSOUTH BANK N.A., took the deposition of John E. Maddox on December 29, 1987 without objection by the petitioner of any discovery cutoff.

On or about January 25, 1988, Plaintiff was served pursuant to Federal Rules of Civil Procedure 30(b)(6) a notice of deposition and subpoena duces tecum to bring with it to said deposition certain documents. The Plaintiff, AmSOUTH BANK N.A., on February 2, 1988, filed objection to the deposition and the request for production, and filed a motion for protective order regarding same raising the discovery cutoff as one of the grounds for its objection. AmSOUTH BANK N.A. objected to the following areas of inquiry and request for production:

AREA OF INQUIRY NO. 1:

The transactions between First National Bank, n/k/a AmSouth Bank N.A., Ronald Slepian, Esquire, John E. Maddox, Bender Shipbuilding and Repair Company, Inc. and Gulf Alliance Marine Services Co., Inc. regarding the Vessel GRAND ALLIANCE;

AREA OF INQUIRY NO 2:

Transactions reflecting outstanding debts and loans, etc., owed by Bender Shipbuilding and Repair Company, Inc. to AmSouth Bank N.A. at the time of the transaction for the purchase of the Vessel M/V GRAND ALLIANCE as consummated in December, 1981 and more specifically for the building and/or maintenance of the Vessel M/V GRAND ALLIANCE;

AREA OF INQUIRY NO. 4:

Transactions requesting Ronald Slepian, Esquire's purchase in 1982 of a vessel of a similar make and style as the vessel M/V GRAND ALLIANCE;

AREA OF INQUIRY NO. 8:

Transactions reflecting business connections in 1981 and 1982 between First National Bank n/k/a AmSouth Bank N.A. and the following persons or entities: Bender Shipbuilding and Repair Company, Inc., Gulf Alliance Marine Services Co., Inc., and Ronald Slepian, Esquire.

The objections made by AmSOUTH BANK N.A. were that the areas of inquiry were not relevant and concerned confidential information.

On February 8, 1988, Plaintiff, AmSOUTH BANK N.A., appeared with Alan A. Jones, as the person designated by the bank under Federal Rules of Civil Procedure 30(b)(6). Mr. Jones had previously been deposed about his personal knowledge of matters alleged in an affidavit given by him and said deposition reflected he had in fact no personal knowledge of the facts alleged in said affidavit. Although Defendant was reluctant to

take the deposition of Alan A. Jones a second time, based upon his previous lack of personal knowledge, at the insistence of the Plaintiff that Alan A. Jones was in fact the person most knowledgeable regarding the matters set out in the notice, the Defendant, JOHN E. MADDOX, proceeded with the taking of the deposition of Alan A. Jones a second time. During the second deposition of Alan A. Jones he stated he had no personal knowledge of the loan made to JOHN E. MADDOX, that he was not even with the bank at the time of the loan, that he did not know who participated in granting the loan, that he did not know about the loan procedures of the bank during the time JOHN E. MADDOX applied for the loan, that he did not know who reviewed and/or requested financial statements or appraisal reports regarding said loan. Pursuant to his attorney's direction, he refused to answer questions regarding any business connections between First National Bank of Mobile and Gulf Alliance Marine Services, or Bender Shipbuilding and Repair Company, Inc. or Ronald P. Slepian and he would not testify regarding outstanding loans or the purchase of a similar ship Ronald P. Slepian the following year after the loan was made to JOHN E. MADDOX. Mr. Jones further failed to appear at the deposition with requested documents such as computer print-outs, loan documentation to Bender Shipbuilding and Repair Company, Inc., Gulf Alliance Marine Services or Ronald L. Slepian, loan committee minutes or Board of Directors minutes regarding the loan, giving as reason for his nonproduction of said documents that same were confidential or that he did not know anything about said documents (Appendix pp. A52-A60). The Defendant filed a motion to compel on February 11, 1988 regarding the above but said motion was denied by the magistrate stating that same was moot

as the discovery period had expired (the magistrate failed to reverse his decision once discovery was re-opened).

Defendant filed a motion to reopen discovery on February 1, 1988. On February 9, 1988, the trial court entered an order denying Defendant's motion to reopen discovery. On February 11, 1988, the Defendant, JOHN E. MADDOX, filed a motion to reconsider as well as a motion to compel discovery. That same day, the trial court ordered that discovery was only to be conducted by agreement between the parties. The Plaintiff refused attempts to conduct discovery by agreement. On March 3, 1988, trial court granted the Defendant's motion to reconsider and reopened discovery which was to be completed on or before May 6, 1988. The Plaintiff, AmSOUTH BANK N.A., filed a motion to reconsider and motion to quash notice of depositions after discovery was reopened. As a result of these motions the Defendant had to delay discovery until the trial court rendered a decree on March 30, 1988 denying Plaintiff's motions. The Defendant had to file a motion for extension of time for discovery due to this and said motion was granted on April 29, 1988 extending the discovery completion date to June 3, 1988.

After discovery was reopened, the Defendant filed request for production and interrogatories to the Plaintiff, AmSOUTH BANK N.A., on April 14th and 19th, 1988. On May 18, 1988 the Plaintiff filed its answers to the April 14, 1988 interrogatories and request for production. On May 19, 1988, the Plaintiff filed a general objection to the request for production of April 19, 1988. On May 20, 1988, the Defendant filed a motion to compel regarding the Plaintiff's failure to respond to interroga-

tories and failure to produce the requested documents (Appendix p. A45). The magistrate denied this motion to compel on May 25, 1988 stating that the Defendant had failed to have a discovery conference with the Plaintiff (Appendix p. A44). Although there had in fact been a prior discovery conference, subsequently the Defendant and the Plaintiff had another discovery conference which failed to produce any kind of supplementation to the previous answers to interrogatories and request for production. Thereafter, on June 3, 1988, the Defendant filed his second motion to compel requesting the Plaintiff to answer the interrogatories and request for production and to respond to the previous request for production under the Rule 30(b)(6) notice of deposition (Appendix p. A19). The magistrate then entered a new order on June 23, 1988 denying Defendant's second motion to compel stating that Defendant had failed to identify specifically and succinctly the responses which Defendant claimed were insufficient (Appendix p. A17). It should be noted to the Court that the interrogatories, request for production, the notice of deposition, subpoena duces tecum and Plaintiff's responses thereto were attached to the motion to compel. On July 1, 1988, the Defendant filed a third motion to compel stating succinctly and specifically the areas where the Plaintiff had failed to respond (Appendix p. A11). The magistrate on July 13, 1988 entered an order stating that the Plaintiff by its failure to file an objection to the Motion to Compel waive opposition to same but that the Motion to Compel was still denied as that the discovery period had expired and the motion to compel was filed outside said discovery period (Appendix p. A10). On July 22, 1988 the Defendant filed an objection to the recommenda-

tion of the magistrate's ruling but this objection was denied by the United States District Court Judge, Alex T. Howard, Jr., who affirmed the magistrate's orders of May 25th, June 23rd and July 13th, 1988 (Appendix pp. A6, A4).

The Defendant filed for Writ of Mandamus to the Fifth Circuit on August 26, 1988 which was denied and the Suggestion For Rehearing En Banc was denied October 24, 1988 (Appendix pp. A3, A1). Thus this Writ of Certiorari to the United States Supreme Court.

(B) Statement of Facts

The subject matter of the complaint is a promissory note, which the Defendant, John E. Maddox, signed on December 23, 1981, with the First National Bank of Mobile. The original promissory note was signed for the purchase of a vessel called the "Grand Alliance" and involved a loan for $1,170,000.00 (Appendix pp. A61-A62). The Defendant, John E. Maddox, was advised by his then attorney, Ronald P. Slepian, to purchase the vessel as a tax write-off. The Defendant, John E. Maddox, had no previous experience with ships of any kind and relied upon the advice of his attorney. Ronald P. Slepian made the necessary arrangements with Bender Shipbuilding & Repair Company, Inc., First National Bank of Mobile, and Gulf Alliance Marine Services (Appendix pp. A64-A65). The Defendant, John E. Maddox, was not aware of any connection between the above-stated parties until sometime after the purchase of the vessel from Bender Shipbuilding & Repair Company, Inc. when it was learned that First National Bank of Mobile had dealings with Bender Shipbuilding & Repair Company,

Inc.; that Gulf Alliance Marine Services was run by a close relative of Bender Shipbuilding & Repair Company, Inc.; and that shortly after the signing of the loan agreement, Ronald P. Slepian, Esquire, purchased from Bender Shipbuilding & Repair Company, Inc., a vessel of the same make and size as the "Grand Alliance" (Appendix pp. A62-A63).

The Defendant, John E. Maddox, has attempted to raise as a defense against the promissory note, which the successor bank, AmSouth Bank N.A., assumed from First National Bank of Mobile, that the promissory note was unconscionable, and that there appears to be fraud in the inducement to enter into the contract. The Defendant attempted to take the deposition of Bender Shipbuilding & Repair Company, Inc. and Ronald P. Slepian, Esquire, but was prevented from doing so by the Plaintiff until after the trial court reopened discovery over the objection of the Plaintiff. The Plaintiff also refused to turn over certain documents regarding past dealings between the First National Bank of Mobile and Bender Shipbuilding & Repair Company, Inc., Ronald P. Slepian, Esquire, or Gulf Alliance Marine Services. The Plaintiff has continued to refuse to respond to discovery requests or interrogatories and has waived all objections to Defendant's Motions to Compel.

ARGUMENT AND AUTHORITIES

Petitioner is entitled to a Writ of Certiorari on the relief sought because it is one of the fundamental rights of a defendant to conduct discovery before the trial of his case. Alabama has long recognized that the discovery provisions of the Federal Rules of Civil Procedure are to be broadly and liberally construed. Fed. Rules Civ. Proc. Rules 26(b), 33, 28 U.S.C.A., *Burns v. Thiokol Chemical Corp.*, 483 F.2d 300, rehearing denied, 485 F.2d 687 (C.A. Ala. 1973). To allow the trial court in the name of enforcing the local rules, the right to deny discovery where the party requesting the Motion to Compel has attempted to comply with the requests of the trial court while in the same breath the offending party has waived all objections to the Motion to Compel, is a gross and inexcusable abuse of discretion, which no court can sanction; for to do so would result in substantial prejudice to the rights of the petitioner. *Huff v. N.D. Cass Co. of Ala.*, 468 F.2d 172, rehearing denied, 485 F.2d 710 (C.A. Ala. 1972). If the trial court had set forth all of its grounds for denial in its order on the first motion to compel then the second motion to compel would have been filed, without doubt, properly and within the discovery period. Instead the trial court chose to give a new ground for denial each and every time that the petitioner complied with the trial court's previous order. The trial court also chose to berate the petitioner for filing his motion late while at the same time said magistrate took twenty (20) days to rule on the second Motion to Compel and limited the discovery period by having same originally cut off before the petitioner was even served. Furthermore, no specific mention has ever

been made other than a statement in a magistrate's Order of January 28, 1988 that motions were to be brought in a timely manner (Appendix p. A49). In the case of *Crawford v. Dominic,* 469 F.Supp. 260 (D.C. Penn. 1979) the court held that where the Defendant had failed to show any legally cognizable reason for denying the discovery request of the Plaintiff and where there was ambiguity on the order entered by the trial judge the court would not consider the argument that the Plaintiff was time-barred on the renewed motion for discovery. If this Court would take the current case one step further it could consider Defendant's refiled Motion to Compel as a motion for re-argument under the Federal Rules of Civil Procedure Rule 37(a) and same was filed within that ten (10) day requirement.

While the Petitioner may ultimately be disappointed in his discovery quest to provide a successful defense, he should nevertheless be allowed the opportunity to conduct the discovery. In the similar case of *Rorer Intern. Cosmetics, LTD. v. Halpern,* 85 F.R.D. 43 (1979), the court stated that the appealing party was entitled to conduct the discovery requested.

If this Court allows the trial court's rulings to stand it will give a clear signal to all parties that they can hide behind local rules, refusing to cooperate in good faith with discovery requests, and that by doing so deny the rights of the opposition to a fair trial. If this happens the Court will turn back the hands of time reverting back to the archaic age of pleadings and demurer where style was everything, and justice often became the victim of paperwork. In closing it should again be pointed out that the Plaintiff has fought the discovery requests of the Petitioner every step of the way and has not set forth one

valid reason for denying the requested discovery as clearly shown in its waiver of objections to the motions to compel.

WHEREFORE, the premises considered, Petitioner requests that this Court enter an order granting his petition for writ of certiorari so as to order the Honorable Alex T. Howard, Jr., United States District Court Judge for the Southern District of Alabama, Southern Division, and the Honorable Bert W. Milling, Jr., United States Magistrate, to reverse their orders denying the Motion to Compel and order that the Plaintiff comply completely and fully with the pending discovery requests.

Respectfully submitted,

HOWELL, JOHNSTON, LANGFORD
& WATTERS
RICHARD L. WATTERS
Post Office Box 1643
Mobile, Alabama 36633
Phone: 205/432-2677
Attorney for Petitioner

CERTIFICATE OF SERVICE

This 24th day of January, 1989, copies of the foregoing pleading were served upon counsel to all parties to this proceeding by first depositing same into the United States Mail, properly addressed and first class postage prepaid as follows:

Broox Holmes, Esq.
M. Kathleen Miller, Esq.
Post Office Box 290
Mobile, Alabama 36601

Charles H. Erwin, Esq.
2252 Government Street
Suite B
Mobile, Alabama 36606

Hon. Alex T. Howard, Jr.
Judge of the United States
District Court for the
Southern District of
Alabama, Southern Division
Post Office Box 3104
Mobile, Alabama 36652

Hon. Bert W. Milling, Jr.
United States Magistrate
District Court for the
Southern Division of
Alabama, Southern Division
Post Office Box 3104
Mobile, Alabama 36652

APPENDIX

APPENDIX A

(Filed October 24, 1988)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 88-7534

IN RE:

JOHN E. MADDOX,
Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Alabama

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING IN BANC

Order of August 29, 1988 Denying the Petition for Writ of Mandamus
(October 24, 1988)

Before ANDERSON, CLARK and EDMONDSON, Circuit Judges.

PER CURIAM:

(√) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of

Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause in banc, and a majority of the judges in active service not having voted in favor of it, Rehearing In Banc is DENIED.

Entered for the Court:

/s/ (Illegible)
United States Circuit Judge

APPENDIX B

(Filed August 29, 1988)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 88-7534

IN RE:

JOHN E. MADDOX,
Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Alabama

---

Before ANDERSON, CLARK and EDMONDSON, Circuit Judges.

BY THE COURT:

The petition for writ of mandamus is DENIED.

APPENDIX C

(Dated August 5, 1988)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 87-0265-C

AmSOUTH BANK,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

ORDER

On July 22, 1988, defendant John E. Maddox filed a document entitled "OBJECTION TO THE RECOMMENDATION OF THE MAGISTRATE'S RULING." Defendant in fact seeks to appeal from the Magistrate's orders of May 25, June 23 and July 13, 1988, each involving discovery matters.

The Court has carefully considered the challenged orders of the Magistrate, together with defendant's objec-

tions and the record as a whole. Based upon such consideration, the Court concludes that the Magistrate's rulings are correct.

Consequently, it is ORDERED that the Magistrate's orders of May 25, June 23 and July 13, 1988 be and are hereby AFFIRMED.

DONE this 5th day of August, 1988.

/s/ Alex T. Howard
U.S. District Judge

APPENDIX D

(Filed July 22, 1988)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO.
87-0265-C

AmSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

OBJECTION TO THE RECOMMENDATION OF THE MAGISTRATE'S RULING

Comes now the Defendant, JOHN E. MADDOX, in the above styled cause, and files the following objection to the recommendation of the Magistrate entered as an Order on July 13, 1988. Defendant gives as grounds for said motion the following:

1. On May 20, 1988 the Defendant, JOHN E. MADDOX, filed a Motion to Compel against the Plaintiff, AmSouth Bank, N.A., for failing to respond to Defendant's Request for Production. The Magistrate in his

Order of May 25, 1988 denied the Defendant's Motion to Compel giving as grounds therefore the Defendant failed to comply with the discovery conference requirements.

2. On June 3, 1988 the Defendant, JOHN E. MADDOX, filed his first amended Motion to Compel stating that he had complied with the discovery conference requirement. On June 23, 1988 the Magistrate entered an Order denying the Defendant's Motion to Compel giving as grounds therefore that the Defendant failed to identify specifically and succinctly the responses which Defendant claimed were insufficient.

3. On July 1, 1988 the Defendant filed a second amended Motion to Compel stating succinctly therein how the Plaintiff had failed to respond to Defendant's Interrogatories, to Defendant's Requests for Production and to the Defendant's Subpoena Duces Tecum on the deposition of the Rule 30(b)(6) opponent. On July 13, 1988 the Magistrate denied this Motion to Compel stating that the period for discovery had expired while noting that the Plaintiff has failed to file written objection to the Motion to Compel.

4. The actions of the Plaintiff, AmSOUTH BANK, N.A., during the entire discovery process has made it impossible for the Defendant to conduct needed discovery.

5. The Defendant will be unduly prejudiced during any trial of the above styled matter or any Motion for Summary Judgment regarding the above styled matter if this Court fails to reverse the Magistrate's ruling.

WHEREFORE, the premises considered, the Defendant, JOHN E. MADDOX, respectfully requests the Court

to enter an order setting aside the latest Order of the Magistrate and that it enter an Order that the Plaintiff, AmSOUTH BANK, N.A., respond to Defendant's Interrogatories, Requests for Production and Subpoena Duces Tecum as set out in Defendant's last amended Motion to Compel.

Respectfully submitted,

Howell, Johnston, Langford
& Watters

By: /s/ Richard L. Watters
Richard L. Watters
Attorney for Defendant
P. O. Box 1643
Mobile, Alabama 36633
(205) 432-2677

ORAL ARGUMENT REQUESTED

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 21st day of July, 1988, served a copy of the foregoing pleading on counsel for all parties concerned as listed below by hand delivery of same.

Broox G. Holmes, Esq.
M. Kathleen Miller, Esq.
ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
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Honorable Bert W. Milling, Jr.
United States District Court
Magistrate
Federal Courthouse
Mobile, Alabama

Charles H. Erwin, Esquire
2252 Government Street
Suite B
Mobile, Alabama 36606

/s/ Richard L. Watters
Richard L. Watters

APPENDIX E

(Dated July 13, 1988)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION 87-0265- -M

AMSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

ORDER

On July 1, 1988, Defendant filed a Motion to Compel Plaintiff's response to requests for production (doc. 72). Plaintiff has failed to file a written objection within ten days and it is hereby deemed to have waived objection. However, the Motion to Compel is DENIED because it was filed outside the period for discovery. The discovery completion date expired on June 3, 1988.

DONE this 13th day of July, 1988.

/s/ Bert W. Milling, Jr.
Bert W. Milling, Jr.
United States Magistrate

APPENDIX F

(Filed July 1, 1988)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO.
87-0265-C

AmSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

MOTION TO COMPEL

Comes now the Defendant, JOHN E. MADDOX, in the above styled cause and moves for this Court to enter an Order compelling the Plaintiff, AmSOUTH BANK, N.A., to respond to Defendant's Requests for Production and as grounds for such motion the Defendant states the following:

1. The Plaintiff has tried to avoid the Defendant's Request for Production in the past and, Defendant filed a Motion to Compel regarding same but the Court ruled same moot because of a discovery cut off which has now been lifted, and Plaintiff now attempts to do same again by stating that these records are the confidential records

of their customer, or were previously produced by, Bender Shipbuilding & Repair Co., Inc. or Ronald P. Slepian, Esquire. See Defendant's Notice of Deposition, Defendant's Interrogatories and Request for Production and Plaintiff's Response to said Request which are attached hereto and form a part hereof as if fully set out herein.

2. This statement does not comply with the Court's local rule and furthermore, Bender Shipbuilding & Repair Co., Inc. and Ronald P. Slepian, Esquire did not produce all the requested documents which AmSouth Bank, N.A. is known to have copies or the originals of. The Defendant more specifically describes the failure of the Plaintiff to respond to his Interrogatories and Requests for Production as follows:

In The Defendant's Interrogatories:

1(a). No position of employment is given.

1(b). No details as to the method of investigation review or other type of procedure of the loan application is described.

1(c). The Plaintiff fails to describe specifically what the recommendations, opinions and voting was on the loan application but instead gives a general vague answer.

1(d). The Plaintiff has refused to produce documents regarding the loan application including Minutes of the Board of Directors, Creditor Meeting, etc. that are known to exist and have been testified to by several people as existing but have not been produced.

2. Plaintiff fails to give the name and address of persons in its office or in Bender Shipbuilding that discussed or reviewed the loan application.

2(a). Plaintiff failed to name dates that it received reports, recommendation, etc. or discussions regarding the loan application.

2(b). Plaintiff failed to name dates that it received reports, recommendation, etc. or when discussions were held regarding the loan application.

2(c). Plaintiff failed to state the subject matter of the reports, recommendation or what was discussed regarding same.

2(d). Plaintiff failed to produce any documents regarding the recommendations, and reports on the loan application such as the Board Meetings Minutes, Loan Committee Meeting Minutes, etc.

4. Plaintiff fails to describe the loan application procedure of First National Bank as it existed immediately proceeding January 3, 1981 describing in detail the steps of same.

4(c). Again Plaintiff failed to produce documents regarding the application procedure used regarding the loan to John Maddox.

5. Plaintiff makes a self-serving statement and then fails to answer the question.

5(a). Plaintiff fails to give the names and address of persons or entities that it has obtained reports, statements or memorandums from.

5(b). Plaintiff fails to answer the question.

5(c). Plaintiff fails to answer the question.

5(d). Plaintiff fails to answer the question.

6. Plaintiff failed to answer the question except referring to the unanswered questions in Interrogatory No. 5.

7. Plaintiff makes a self-serving statement and then fails to give names, residence, business address, job title and telephone number of persons that have knowledge of the circumstances surrounding the events made the subject of this lawsuit and fails to state the substance of all facts and opinions held by such persons.

9(c). Plaintiff is known to possess computer print-outs and other documents regarding its calculations of its claim for actual damages but has refused to produce same to Defendant.

In The Defendant's Requests for Production:

1. Plaintiff failed to produce anything.

2. Plaintiff failed to produce transaction papers reflecting the outstanding debts and loans etc. between First National and Bender Shipbuilding and Repair Company.

4. Plaintiff failed to produce papers reflecting the transactions with Ronald Slepian for the purchase of a similar vessel as the one Plaintiff bought.

In The Defendant's Duces Tecum of the Notice of Deposition:

8. Plaintiff failed to produce transactions between First National Bank and Ronald Slepian, Bender Shipbuilding and Repair Company, Inc., and Gulf Alliance Marine Services Co., Inc.

3. Pursuant to the Court's Order of January 28, 1988, Defendant's attorney has held a discovery conference with the Plaintiff's attorney but failed to reach any compromise and thus the Court's involvement is necessary.

4. The Defendant cannot successfully argue any Motion for Summary Judgment due to the flagrant violations of the Plaintiff in regards to its failure to comply with discovery.

WHEREOF, the premises considered, the Defendant, JOHN E. MADDOX, requests the Court to enter an order compelling the Plaintiff, AmSOUTH BANK, N.A., to respond to Defendant's Request for Production.

Respectfully submitted,

Howell, Johnston, Langford
& Watters

By: /s/ Richard L. Watters
Richard L. Watters
Attorney for Defendant
P. O. Box 1643
Mobile, Alabama 36633
(205) 432-2677

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 1st day of July, 1988, served a copy of the foregoing pleading on counsel for all parties concerned as listed below by hand delivery of same.

Broox G. Holmes, Esq.
M. Kathleen Miller, Esq.
ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
Post Office Box 290
Mobile, Alabama 36601

Charles H. Erwin, Esquire
2252 Government Street
Suite B
Mobile, Alabama 36606

/s/ Richard L. Watters
Richard L. Watters

APPENDIX G

(Dated June 23, 1988)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION 87-0265- -M

AMSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

ORDER

On June 3, 1988, Defendant filed a Motion to Compel Plaintiff to respond to Defendant's request for production propounded to Plaintiff on April 14, 1988. Attached to the Motion to Compel is a copy of Plaintiff's response dated May 18, 1988. Therefore, it appears that Plaintiff has responded. If Defendant's intent was to have the Court rule on the sufficiency of the responses, Defendant has not identified specifically and succinctly the responses which Defendant claims are insufficient, as required in paragraph B "Discovery Motions" in the Court's Order

dated January 28, 1988 (docs. 7, 38, and 63). Therefore, the Motion to Compel is DENIED.

Since the time for discovery in this case expired on June 3, 1988, it appears that Plaintiff's Motion to Reconsider the Court's Order of March 3, 1988, denying Plaintiff's Motion for Summary Judgment (doc. 58), is now ripe for consideration. Although Defendant has filed a response to this Motion to Reconsider on March 25, 1988, in light of the additional discovery that has been allowed, the parties are given until July 7, 1988, to supplement the above-referenced pleadings, after which time Plaintiff's Motion to Reconsider will be taken under submission.

DONE this 23rd day of June, 1988.

/s/ Bert W. Milling, Jr.
Bert W. Milling, Jr.
United States Magistrate

APPENDIX H

(Filed June 3, 1988)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION
CIVIL ACTION NO.

87-0265-C

AmSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

MOTION TO COMPEL

Comes now the Defendant, JOHN E. MADDOX, in the above styled cause and moves for this Court to enter an Order compelling the Plaintiff, AmSOUTH BANK, N.A., to respond to Defendant's Requests for Production and as grounds for such motion the Defendant states the following:

1. The Plaintiff has tried to avoid the Defendant's Request for Production in the past and, Defendant filed a Motion to Compel regarding same but the Court ruled same moot because of a discovery cut off which has now

been lifted, and Plaintiff now attempts to do same again by stating that these records are the confidential records of their customer, or were previously produced by, Bender Shipbuilding & Repair Co., Inc. or Ronald P. Slepian, Esquire. See Defendant's Notice of Deposition, Defendant's Interrogatories and Request for Production and Plaintiff's Response to said Request which are attached hereto and forms a part hereof as if fully set out herein.

2. This statement does not comply with the Court's local rule and furthermore, Bender Shipbuilding & Repair Co., Inc. and Ronald P. Slepian, Esquire did not produce all the requested documents which AmSouth Bank, N.A. is known to have copies or the originals of.

3. Pursuant to the Court's Order of January 28, 1988, Defendant's attorney has held a discovery conference with the Plaintiff's attorney but failed to reach any compromise and thus the Court's involvement is necessary.

WHEREOF, the premises considered, the Defendant, JOHN E. MADDOX, requests the Court to enter an order compelling the Plaintiff, AmSOUTH BANK, N.A., to respond to Defendant's Request for Production.

Respectfully submitted,

Howell, Johnston, Langford
& Watters

By: /s/ Richard L. Watters
Richard L. Watters

Attorney for Defendant
P. O. Box 1643
Mobile, Alabama 36633
(205) 432-2677

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 1st day of June, 1988, served a copy of the foregoing pleading on counsel for all parties concerned as listed below by hand delivery of same.

Broox G. Holmes, Esq.
M. Kathleen Miller, Esq.
ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
Post Office Box 290
Mobile, Alabama 36601

Charles H. Erwin, Esquire
2252 Government Street
Suite B
Mobile, Alabama 36606

/s/ Richard L. Watters
Richard L. Watters

(Filed January 25, 1988)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NUMBER:
87-0265-C

AMSOUTH BANK, N.A.,
Plaintiff,

V.

JOHN E. MADDOX,
Defendant.

NOTICE OF DEPOSITION

TO:

Christopher I. Gruenewald, Esquire
M. Kathleen Miller, Equire
JOHNSTONE, ADAMS, BAILEY,
GORDON & HARRIS
Post Office Box 290
Mobile, Alabama 36601

DATE:

MONDAY, FEBRUARY 8, 1988

TIME:

10:00 A.M.

LOCATION:

LAW OFFICES OF
HOWELL, JOHNSTON, LANGFORD & WATTERS
61 ST. JOSEPH STREET
SUITE 903
MOBILE, ALABAMA 36602

You are hereby notified that the Defendant, JOHN E. MADDOX, will pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure take the pretrial deposition(s) upon oral examination of the officer(s), director(s), or agent(s) of Plaintiff, AmSouth Bank, N.A., most knowledgeable with the the following transactions:

1. The transactions between First National Bank n/k/a AmSouth Bank, N.A., Ronald Slepian, Esquire, John E. Maddox, Bender Shipbuilding and Repair Company, Inc., and Gulf Alliance Marine Services Co., Inc., regarding the Vessel M/V Grand Alliance;

2. Transactions reflecting outstanding debts and loans, etc., owed by Bender Shipbuilding and Repair Company, Inc., to AmSouth Bank, N.A., at the time of the transaction for the purchase of the vessel M/V Grand Alliance as consummated in December, 1981 and more specifically for the building and/or maintenance of the Vessel M/V Grand Alliance;

3. Any and all transactions and documentation regarding the proposed purchase of the vessel M/V Grand Alliance by John Maddox in December, 1981.

4. Transactions reflecting Ronald Slepian, Esquire's purchase in 1982 of a vessel of a similar make and style as the vessel M/V Grand Alliance;

5. Transactions reflecting payments made by John E. Maddox toward the purchase of the Vessel M/V Grand Alliance to the present date;

6. Transactions regarding appraisals made or given regarding the net worth of John E. Maddox on his proposed purchase of the Vessel M/V Grand Alliance;

7. Transactions regarding legal advice or references thereof given to John E. Maddox and/or his representatives regarding his proposed purchase of the Vessel M/V Grand Alliance;

8. Transactions reflecting business connections in 1981 and 1982 between First National Bank n/k/a AmSouth Bank, N.A. and the following persons or entities: Bender Shipbuilding and Repair Company, Inc., Gulf Alliance Marine Services Co., Inc., and Ronald Slepian, Esquire.

Said deposition will be taken before some officer duly authorized by law to take depositions. The deposition and discovery and will continue from day to day until completion of same. You are invited to attend and examine the deponent.

The Plaintiff, AmSouth Bank, N.A., is reminded that, pursuant to Rule 30(b)(6), it must designate one or more of its officers, directors or managing agents, or other persons who consent to testify on its behalf, who shall testify as to the various matters referred to in the preceding paragraphs hereof and provide with respect to such matters the information known or reasonably available to the Plaintiff, AmSouth Bank, N.A.

Said deposition and examination will be with respect to (a) the existence and location of all books, documents

or other tangible things described in the following Rule 30(b)(5) request below, (b) all matters as to which such books, documents or other tangible things relate, (c) the identity and location of persons having knowledge about such matters.

DUCES TECUM: TO PRODUCE AT DEPOSITION:

1. Any and all documents reflecting communications between First National Bank n/k/a AmSouth Bank, N.A., Ronald Slepian, Esquire, John E. Maddox, Bender Shipbuilding and Repair Company, Inc., and Gulf Alliance Marine Services Co., Inc., regarding the Vessel M/V Grand Alliance.

2. Any and all documents reflecting outstanding debts and loans, etc., owed by Bender Shipbuilding and Repair Company, Inc., to AmSouth Bank, N.A., at the time of the transaction for the purchase of the vessel M/V Grand Alliance as consummated in December, 1981 and more specifically for the bidding and/or maintenance of the Vessel M/V Grand Alliance.

3. Any and all documentation regarding the proposed purchase of the vessel M/V Grand Alliance by John Maddox in December, 1981.

4. Any and all documentation reflecting Ronald Slepian, Esquire's purchase in 1982 of a vessel of a similar make and style as the vessel M/V Grand Alliance.

5. Any and all documentation reflecting payments made by John E. Maddox toward the purchase of the Vessel M/V Grand Alliance to the present date.

6. Any and all documents regarding appraisals made or given regarding the net worth of John E. Maddox on his proposed purchase of the Vessel M/V Grand Alliance.

7. Any and all documentation regarding legal advice or references thereof given to John E. Maddox and/or his representatives regarding his proposed purchase of the Vessel M/V Grand Alliance.

8. Any and all documentation reflecting business connections in 1981 and 1982 between First National Bank n/k/a AmSouth Bank, N.A. and the following persons or entities: Bender Shipbuilding and Repair Company, Inc., Gulf Alliance Marine Services Co., Inc., and Ronald Slepian, Esquire.

Howell, Johnston, Langford
& Watters

/s/ Richard L. Watters
Richard L. Watters,
Attorney for Plaintiff
Post Office Box 1643
Mobile, Alabama 36633
(205) 432-2677

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 25th day of January, 1988, served a copy of the foregoing by mailing same by United States mail, properly addressed, with first class postage prepaid to:

Christopher I. Gruenewald, Esquire
M. Kathleen Miller, Esquire
JOHNSTONE, ADAMS, BAILEY,
GORDON & HARRIS
Post Office Box 290
Mobile, Alabama 36601

Charles H. Erwin, Esquire
ATTORNEY AT LAW
2252 Government Street, Suite B
Mobile, Alabama 36606

/s/ Richard L. Watters
Richard L. Watters

(Filed April 14, 1988)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

Civil Action No.
87-0265-C

AMSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

DEFENDANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION

Comes now the Defendant, JOHN E. MADDOX, in the above-styled cause and pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, propounds the following set of Interrogatories and Requests for Production of Documents to the Plaintiff, AMSOUTH BANK, N.A., which must be answered, complied with, or responded to within thirty (30) days as follows:

DEFINITIONS

Unless indicated, the following definitions shall be applicable to these interrogatories:

1. The term "you" or "your" shall mean the Defendants, separately and severally, their attorneys, em-

ployees, agents, or representatives and all other persons acting on their behalf.

2. The term "person" shall mean any individual, partnership, firm, association, corporation, or other business, governmental, education or legal entity.

3. The term "document" shall mean any written, recorded, transcribed, punched, taped, filmed or graphically reproduced matter of any kind or description however produced or reproduced.

4. The term "address" shall mean the complete street, number, city and state of the subject person as that term is applied in Number 2 above.

5. The term "identify" or "identification" when used with reference to a person, shall mean to state the full name, and present or last known address of said person. When used with reference to a document, the term "identify" or "identification" shall mean to state the document's date, author or signer, the full address of the author or signer, the type of document and all other means of identifying said document, including but not limited to its present or last known location or custodian; if any, document was but is no longer in your possession, custody and control, state the disposition of the document and the reason for said disposition. If a requested document has been lost or destroyed, pursuant to Rule 33, F.R.C.P., please state:

(1) a description of the document;

(2) the date the document was prepared;

(3) the name, address and employer of the person who prepared the document and of the person

who provided input during the preparation of the document;

(4) the subject matter of the document;

(5) the person or persons to whom the document is directed or addressed;

(6) the person or persons shown on the document as having received a copy;

(7) the name, address, job title and employer of any person known or believed to have received or seen the document or any copy of summary thereof;

(8) the purpose for which the document was created and transmitted;

(9) the date the document was lost or destroyed;

(10) the name and address of the last person who had possession, custody or control of the document; and,

(11) if destroyed, the reason for the destruction of the document.

In answering these interrogatories you are required under the provisions of Rule 26(e) of the Federal Rules of Civil Procedure to reasonably supplement your response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matter, and (b) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify and the substance of his testimony.

You are under a duty to reasonably amend a prior response if you obtain information upon the basis of

which (a) you know that the response was incorrect when made, or (b) you know that the response though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

Any such supplemental response is to be filed and served upon counsel of record for this Defendant within fifteen (15) days after receipt of such information.

INTERROGATORIES AND REQUEST FOR PRODUCTION

1. Please give the name, address and phone number of each and every person, agent or employee of First National Bank that investigated, reviewed, or participated in the approval of the loan to the Plaintiff which was consummated on December 23, 1981; and as to each person named, give the following:

(a) The position of employment with your company that the individual holds or held at the time of his/her investigation, review or other participation in the loan application.

(b) State in detail the methods that the individual used in the investigation, review or other participation in the loan applicaton.

(c) State the person's recommendations, opinions, vote, etc. given on said loan application.

(d) Attach to your answers to these interrogatories any and all documents reflecting, referencing, or otherwise pertaining to the above investigations, reviews, or other participation, or comply with the introduction

instructions, including, but not limited to minutes of the Board of Directors, loan committee meetings, etc.

2. State the name and address of any person or entity that First National Bank received a report or recommendation from or in any way discussed or reviewed the loan application of the Defendant which was consummated on December 23, 1981; and as to each individual or entity, state the following:

(a) When the First National Bank received the report recommendation etc., and/or discussed with the person or entity the loan application.

(b) State the names, position of authority, address and telephone number of the individuals that received the report, recommendation etc. and/or discussed with the person or entity the loan application.

(c) State in detail the subject matter of the report, recommendation etc. and/or what was discussed.

(d) Attach to your answers to these interrogatories any and all documents reflecting or otherwise referring to the above or comply with the introduction instructions.

3. Describe in detail the First National Bank's reason(s) for granting the loan application of the Defendant which was consummated on December 23, 1981.

4. Describe in detail the loan application procedure of First National Bank as it existed immediately prior to December 23, 1981, in regards to a loan the size of which was made to the Defendant and the qualifications that had to be met before the loan would be approved.

(a) Did the Defendant meet the above described qualifications?

(b) Did First National Bank follow the normal banking procedures with the Defendant that it normally would use for a loan the size of or equivalent to the size made to the Defendant.

(c) Produce any and all documents used or relied upon in answering this interrogatory question and its subparts.

5. Have you or has anyone acting in your behalf attained from any person(s) or entity, any reports, statements, memoranda or testimony concerning the loan application of the Defendant, or related transactions referred to in Defendant's Answer to the Complaint?

(a) If so, what is the name, last known address and present whereabouts, if known, of each such person.

(b) If so, when, where and by whom was each such report, statement, memorandum or testimony obtained or made?

(c) If so, where is each located?

(d) Please describe in detail the contents of each such statement made or taken.

6. As to the statements obtained by or in behalf of you from any other persons named in the preceding interrogatories above, state the names and addresses of the person(s) giving or taking such statement, the date or each statement(s) taken, whether the said statements were written or oral, and the name and address of the person presently in possession of any such statements produced in writing, and the contents of each such statement made or taken.

7. Identify (by name, residence address, business address, job title, and phone number) each person known to you to have any knowledge, whatsoever of any of the

facts and circumstances surrounding the events, (including without limitation facts and circumstances relating to all damages claimed by you), and for each such person, state the substance of all facts and opinions such person is known to you to possess.

8. Identify (by date, title, author, description and identity of recipients) each document or other tangible thing whatsoever which you will or may offer as an exhibit at the trial of this case, and attach to your answers to these Interrogatories the original or an authentic copy of each.

9. Specify each and every item of expense, cost or damage for which you do or may seek compensation or other recovery and state:

(a) The dollar amounts claimed to have been or to be incurred by you pursuant to each item of damage claims; and

(b) The method by which you computed the dollar amount as to each such item of damage.

(c) Please attach to your answers to these Interrogatories any and all documents, including, but not limited to, computer printouts reflecting the dollar amounts owed, monthly statements, payments or credits given, etc. in regards to the above Interrogatory questions.

10. Please state the name and address and identity of each person that you expect to call as an expert witness at trial and state the complete educational background, complete work background and complete qualifications to each such person, and state the substance of the facts and opinions to which each such expert is expected to testify, and give a summary of the grounds for each opinion of each such expert.

11. As to each such expert listed in the preceding interrogatory, please state the scope of the field that you claim such person to have expertise in and as to each such person, state what materials each such person has reviewed or expects to review in preparing to testify in this case, and furnish the names of any books, works, texts, articles or standards which each such expert expects to refer to in preparing to testify or in testifying and please furnish to the Defendant a copy of all written reports prepared by each such expert pertaining to investigation or conclusions involved in this particular case.

12. As to each expert listed in your answer to Interrogatory No. , please state if each such expert has reviewed or will review any testimony or depositions of Defendant's expert(s) to be taken in the future, then please furnish any critique prepared by your expert of the testimony of Defendant's expert(s) and any differences of opinion or fact which your expert(s) have of Defendant's facts or opinions when you receive same.

13. Please state the name, address and any fact known or opinion held by any expert who has been retained specifically employed or assigned by you in anticipation of litigation in preparation of trial and who is not expected to be called as a witness at trial.

Howell, Johnston, Langford
& Watters
903 SouthTrust Bank Bldg.
Post Office Box 1643
Mobile, Al. 36633

By: /s/ Richard L. Watters
Richard L. Watters, one of
the attorneys for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 14th day of April, 1988, served a copy of the foregoing pleading on Broox G. Holmes, Esq., and M. Kathleen Miller, Esq., Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves, Post Office Box 290, Mobile, Alabama 36601, and Charles H. Erwin, Attorney at Law, Suite B, 2252 Government Street, Mobile, Alabama 36606, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

/s/ Richard L. Watters
Richard L. Watters

(Dated April 14, 1988)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

Civil Action No.
87-0265-C

AMSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

DEFENDANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION

Comes now the Defendant, JOHN E. MADDOX, in the above-styled cause and pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, propounds the following Requests for Production of Documents to the Plaintiff, AMSOUTH BANK, N.A., which must be answered, complied with, or responded to within thirty (30) days as follows:

DEFINITIONS

Unless indicated, the following definitions shall be applicable to these Request for Production:

1. The term "you" or "your" shall mean the Defendants, separately and severally, their attorneys, employees,

agents, or representatives and all other persons acting on their behalf.

REQUEST FOR PRODUCTION

1. Any and all documents relating to the loan agreement between First National Bank and Bender Shipbuilding and Repair Company, Inc., which was in effect in 1981, so as to allow Benders a line of credit for the building of vessels and any and all documents referencing the line of credit as of each month of 1981 (i.e. how much credit had been used by Bender Shipbuilding And Repair Company, Inc. during said months).

Howell, Johnston, Langford
& Watters
903 SouthTrust Bank Bldg.
Post Office Box 1643
Mobile, Al. 36633

By: /s/ Richard L. Watters
Richard L. Watters, one of
the attorneys for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19 day of April, 1988, served a copy of the foregoing pleading on Broox G. Holmes, Esq., and M. Kathleen Miller, Esq., Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves, Post Office Box 290, Mobile, Alabama 36601, and Charles H. Erwin, Attorney at Law, Suite B, 2252 Government Street, Mobile, Alabama 36606, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

/s/ Richard L. Watters
Richard L. Watters

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

Civil Action No.
87-0265-C

AmSOUTH BANK N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

PLAINTIFF AmSOUTH BANK N.A.'S RESPONSE TO DEFENDANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION

Comes now AmSouth Bank N.A., ("AmSouth") Plaintiff in the above-styled cause, and responds to the interrogatories and request for production of documents propounded to AmSouth by Defendant John E. Maddox ("Maddox") on April 14, 1988 as follows:

* AmSouth objects generally to the "definitions" set forth on pages 1 -3 of the interrogatories and request for production as being unnecessary, burdensome and outside the scope of FRCP 33 and FRCP 34.

1. David E. Younce.

(b) To the best of AmSouth's knowledge, the loan was made by First National based upon normal banking practice with reliance on the financial statements, appraisals, etc., submitted by Maddox and his counsel, Ronald P. Slepian.

(c) Favorable.

(d) Any such documents in the possession of AmSouth have been previously produced to Defendant.

2. Maddox and his attorney Ronald P. Slepian submitted Maddox's financial statements to the Bank. In addition Maddox and his attorney provided the Bank with an appraisal of real property made by M.D. Bell Co., Inc. in Mobile, Alabama and an appraisal of mineral acres owned by Maddox made by Wilbur H. Knight a Petroleum Geologist, Jackson, Mississippi.

(b)-(d) The aforementioned documents have been previously produced to Defendant.

3. The loan was made because Maddox and his counsel applied for the loan and submitted data which supported the loan at the time it was made and which the Bank relied upon in making the loan.

4. The procedure which was used in making the loan to Maddox.

(a) Yes, based on representations and information supplied by Maddox and his counsel.

(b) Yes.

(c) Any such documents have been previously produced to Defendant.

5. Defendant objects to this interrogatory as being unintelligible. AmSouth states, however, that it has repeatedly received assurances of payment of the monies due by Maddox to AmSouth from Maddox himself and his various attorneys through the years. Any documents reflecting the foregoing have been previously produced to Defendant.

6. See response to No. 5 above.

7. On December 23, 1981 Defendant John E. Maddox signed a promissory note and other documents, including a First Preferred Ship Mortgage, in which he agreed to pay the Bank One Million One Hundred Seventy Thousand and 00/100ths Dollars ($1,170,000.00) with interest at a rate equal to the Prime Rate plus 2.25% per annum. Maddox subsequently signed another note dated as of January 5, 1987 in which Maddox agreed to pay the balance of the principal due, the amount of Seven Hundred Seventy Seven Thousand Four Hundred Eight and 48/100ths Dollars ($777,408.48) with interest at 1% per annum in excess of the Prime Rate of AmSouth Bank. Maddox has not paid as he agreed. He lied. This is a fact and the facts are known by Maddox, Ronald P. Slepian, Charles Erwin, Richard Watters, Alan Jones and David Wilson. This is not a matter of opinion. It is fact.

8. Defendant's request for AmSouth's trial exhibits is premature because production or exchange of such documents will be governed by the pretrial order. If there is a trial, obviously the notes and mortgages executed by Maddox will be exhibits. There should be no trial in this case because the case should be disposed of by summary judgment.

9. The amount of principal due is Six Hundred Fifty Four Thousand Five Hundred Thirty Two and 03/100ths Dollars ($654,532.03). The total interest accrued thereon as of May 17, 1988 is Eighty One Thousand Nine Hundred Fifteen and 32/100ths Dollars ($81,915.32) and interest continues to accrue at the rate of 12% per annum or Two Hundred Seventeen and 51/100ths Dol-

lars ($217.51) per day. In addition, AmSouth is entitled as a matter of law to recover its costs in collecting these amounts from Maddox including, but not limited to the amount of Three Thousand and 00/100ths Dollars ($3,000.00) for insurance premiums paid by AmSouth on the GRAND ALLIANCE and a reasonable attorneys' fee not to exceed 15% of the unpaid indebtedness of Maddox at the time a final judgment is entered against Maddox.

(c) Any such documents have been previously produced to Maddox.

10. AmSouth does not anticipate calling an expert witness to prove the obvious. There should be no trial.

11. Not applicable.

12. Not applicable.

13. Not applicable.

AmSouth Bank N.A.

By: /s/ Alan A. Jones
Alan A. Jones
As its Vice President

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned authority, in and for said County in said State, hereby certify that ALAN A. JONES, whose name as VICE PRESIDENT of AmSOUTH BANK N.A., a national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he as such officer and with full au-

thority, executed the same voluntarily for and as the act of said association.

Given under my hand and seal this 18 day of May, 1988.

/s/ (Illegible)
Notary Public, Mobile County, Alabama

[AFFIX NOTARIAL SEAL]
My Commission Expires:
6-17-91

Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves
Post Office Box 290
Mobile, Alabama 36601
(205) 432-6751
Attorneys for Plaintiff
AmSouth Bank N.A.

By: /s/ Broox G. Holmes
Broox G. Holmes

By: /s/ M. Kathleen Miller
M. Kathleen Miller

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 18th day of May, 1988, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

/s/ M. Kathleen Miller

APPENDIX I

(Dated May 25, 1988)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION 87-0265-C-M

AMSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

ORDER

Defendant Maddox' Motion to Compel (doc. 68) is hereby STRICKEN for failure to comply with requirements set out in paragraph A. DISCOVERY CONFERENCE REQUIRED in the Court's Order dated January 28, 1988. (See docs. 7, 38, and 63.)

DONE this 25th day of May, 1988.

/s/ Bert W. Milling, Jr.
Bert W. Milling, Jr.
United States Magistrate

APPENDIX J

(Filed May 20, 1988)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO.
87-0265-C

AmSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

MOTION TO COMPEL

Comes now the Defendant, JOHN E. MADDOX, in the above styled cause and moves for this Court to enter an Order compelling the Plaintiff, AmSOUTH BANK, N.A., to respond to Defendant's Request for Production and as grounds for such motion the Defendant states the following:

1. The Plaintiff has tried to avoid the Defendant's Request for Production in the past and Plaintiff now attempts to do same again by stating that these records are the confidential records of their customer, or were previously produced by, Bender Shipbuilding & Repair Co., Inc. See Plaintiff's Response to Request for Production which is attached hereto and forms a part hereof as if fully set out herein.

2. This statement does not comply with the Court's local rule and furthermore, Bender Shipbuilding & Repair Co., Inc. did not produce all the requested documents which AmSouth Bank, N.A. is known to have copies or the originals of.

WHEREOF, the premises considered, the Defendant, JOHN E. MADDOX, requests the Court to enter an order compelling the Plaintiff, AmSOUTH BANK, N.A., to respond to Defendant's Request for Production.

Respectfully submitted,

Howell, Johnston, Langford
& Watters
By: /s/ Richard L. Watters
Richard L. Watters
Attorney for Defendant
P. O. Box 1643
Mobile, Alabama 36633
(205) 432-2677

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 20th day of May, 1988, served a copy of the foregoing pleading on counsel for all parties concerned as listed below by placing same in the United States mail, properly addressed, and first class postage prepaid.

Broox G. Holmes, Esq.
M. Kathleen Miller, Esq.
ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
Post Office Box 290
Mobile, Alabama 36601

/s/ Richard L. Watters
Richard L. Watters

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

Civil Action No.
87-0265-C

AmSOUTH BANK N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

PLAINTIFF AmSOUTH BANK N.A.'S RESPONSE TO DEFENDANT'S REQUEST FOR PRODUCTION

Comes now AmSouth Bank N.A. ("AmSouth"), Plaintiff in the above-styled cause, and in response to the request for production served upon AmSouth by Defendant John E. Maddox ("Maddox") on or about April 19, 1988, says as follows:

AmSouth objects to the production of the documents requested, to the extent that any such documents are in the possession of AmSouth, on the ground that said documents are not relevant to the subject matter of this proceeding and, moreover, are confidential records of another customer of AmSouth. Furthermore, AmSouth shows unto the Court that the documents requested were produced by

Bender Shipbuilding & Repair Co., Inc. at the deposition of Bender taken by Defendant pursuant to Rule 30(b)(6).

Armbrecht, Jackson, DeMouy,
Crowe, Holmes & Reeves
Post Office Box 290
Mobile, Alabama 36601
(205) 432-6751
Attorneys for Plaintiff
AmSouth Bank N.A.

By: /s/ Broox G. Holmes
Broox G. Holmes

By: /s/ M. Kathleen Miller
M. Kathleen Miller

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19th day of May, 1988, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed and first class postage prepaid.

/s/ M. Kathleen Miller

APPENDIX K

(Dated January 28, 1988)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NO. 87-0265-C-M

AMSOUTH BANK, N.A.,
Plaintiff,

vs.

JOHN E. MADDOX,
Defendant.

ORDER

A discovery conference was conducted by telephone on Plaintiff's Objection to Request for Production of Documents and Motion for Protective Order (doc. 34). After hearing from the parties, the Court directs the parties to confer and attempt to resolve the discovery matters between themselves before filing any other motions with the Court. It also appears to the Court that the parties may be conducting discovery on their own since under the Discovery and Scheduling Order entered on June 17, 1987 (doc. 7), the discovery completion date

was set at October 16, 1987, and there does not appear to be any request in the file for an extension of that date.

In the event that additional discovery is permitted, the parties are hereby ORDERED to comply with the following requirements:

A. DISCOVERY CONFERENCE REQUIRED. Unless a shorter time is permitted by the Court, at least fourteen (14) days before filing a motion pursuant to FED.R.CIV.P. 35, a motion to determine sufficiency pursuant to FED.R.CIV.P. 36(a), a motion to compel pursuant to FED.R.CIV.P. 37(a)(2) or a motion for protective order pursuant to FED.R.CIV.P. 26(c), counsel for the moving party shall confer with counsel for the opposing party in a good-faith effort to resolve by agreement the issues in dispute. Unless the motion contains (1) a certification by the moving party that such a conference has taken place but counsel have been unable to resolve the discovery dispute, or (2) if a conference has not been held, a certification listing what reasonable efforts have been made to hold such a conference with the opposing party, the motion *shall be struck* by the Magistrate for failure to comply with this order.

B. DISCOVERY MOTIONS. Motions for protective order pursuant to FED.R.CIV.P. 26(c), motions to determine sufficiency pursuant to FED.R.CIV.P. 36(a), and motions to compel discovery pursuant to FED.R.CIV.P. 37(a)(2) shall be brought in a timely manner so as to allow sufficient time for the completion of discovery according to any schedule set by the Court. Such motions shall quote *in full* (1) each interrogatory question, request for admission or request for production to which

the motion is addressed, or otherwise identify specifically and succinctly the discovery to which objection is taken or from which a protective order is sought, and (2) the response or the objection and grounds therefor, if any, as stated by the opposing party. Unless otherwise ordered by the Court, the complete transcripts or discovery papers need not be filed with the Court unless the motion cannot be fairly decided without reference to the complete original.

Unless within ten (10) days after the filing of a discovery motion the opposing party files a written objection thereto, he shall be deemed to have waived objection and the Court may act on the motion. Every party filing an objection shall file with the objection a separate memorandum of law, including citations of supporting authorities and any affidavits and other documents setting forth or evidencing facts on which the objection is based.

DONE this 28th day of January, 1988.

/s/ Bert W. Milling, Jr.
Bert W. Milling, Jr.
United States Magistrate

APPENDIX L

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NUMBER:
CV-87-0265-C

AMSOUTH BANK, N.A.,
Plaintiff,

VS.

JOHN E. MADDOX,
Defendant.

The testimony of Alan A. Jones, taken at the law offices of Messrs. Howell, Johnston, Langford & Watters, 903 SouthTrust Bank Building, Mobile, Alabama, on the 8th day of February, 1988, commencing at approximately 11:15 o'clock, A.M.

* * *

[5]

ALAN A. JONES

the witness, after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. WATTERS:

Q. Mr. Jones, as you know from the previous deposition, we represent John Maddox. Regarding the building of the GRAND ALLIANCE and the subsequent purchase by John Maddox, when did the bank—I am going to say "the bank" throughout the deposition and I mean First National Bank of Mobile, which was assumed by AmSouth. When did the bank first learn of the vessel called the GRAND ALLIANCE? A. I would not know anything about when they learned about it.

Q. Well, who would know? A. I would say the officer that made the loan originally.

Q. And who was that officer? A. I don't know.

MR. WATTERS: We are not going to get anywhere. He just doesn't know anything.

[6] MS. MILLER: Richard, he is the officer at AmSouth. He is currently handling the file. He knows more than anybody at AmSouth about Maddox' loan. We are dealing with an eight year old loan from First National Bank of Mobile. We have given you all the documents about the loan, which is all the information the bank has, in addition to what Mr. Jones here knows.

BY MR. WATTERS:

Q. Who is David E. Younce? A. I believe he is an officer or former officer of First National Bank.

Q. And does he work for AmSouth now? A. No.

Q. And do you know where he lives? A. No, I do not.

Q. Who is John P. Fonde, Jr.? A. To my knowledge, he was an officer of First National Bank.

Q. And does he work for AmSouth now? A. No, he does not.

Q. Do you know where he lives? A. I do not.

[7] Q. Would any bank records or documentation reflect where these individuals live, and what they are currently doing, and how they are currently employed? A. I don't think so.

Q. Were any other officers involved besides the ones that I have just mentioned, in the loan of money to John Maddox for the purchase of the vessel known as the GRAND ALLIANCE? A. I really wouldn't have any knowledge.

Q. Well, who would have knowledge? A. (Pause)

MS. MILLER: You don't have to speculate.

A. I don't know.

BY MR. WATTERS:

Q. Would the bank have any records of any officers participating in the transaction regarding the loan to John Maddox for the purchase of the GRAND ALLIANCE? A. The bank would have its credit file.

Q. And has the bank produced that? A. I believe we have.

MS. MILLER: For the record, everything in the credit file, with the exception of documents protected by the attorney/client privilege - [8] correspondence between our law firm and the bank - in regard to the collection of Mr. Maddox' indebtedness has been produced.

BY MR. WATTERS:

Q. Did anyone from the bank request an appraisal of John Maddox before the bank approved the loan to John Maddox A. I don't really understand that question. Are—did anyone—if you would rephrase it. What kind of an appraisal are you talking about?

Q. What are the proper steps for a bank - or your bank - to follow regarding approving a loan for an individual?

MS. MILLER: Before you answer, I am going to object to the question on several grounds. Number one, I object to quote "proper steps" closed quote because I don't know what you mean by that. I mean, you are not talking about—I mean I object to that characterization; I don't know what that means. I don't know if Mr. Jones knows what that means.

I also object to "your bank" because I want to make it clear on the record whether you are [9] talking about AmSouth or First National Bank of Mobile, or any other bank, or what that means.

BY MR. WATTERS:

Q. You can go ahead and answer it A. Okay. Which bank are you referring to; AmSouth, or just in general?

Q. When First National Bank of Mobile made this loan to John Maddox, what were the proper steps and procedures for approving a loan to an individual before just handing him over a check?

MS. MILLER: Same objection, and I also object to the extent that Mr. Jones has never been an officer of the First National Bank of Mobile, and I don't know how he can know what their procedures were.

A. And I'd have to answer that I don't know what proper procedures were in place at the time, you know, the Maddox loan was made.

BY MR. WATTERS:

Q. Who at AmSouth was, in fact, present and an officer of First National Bank of Mobile and could testify regarding the proper steps and procedures in the approving of a loan such as the one taken out by John Maddox in 1980?

[10] MS. MILLER: I am going to object to the form of the question again. If you want to ask him what kind of overlap there was in the Commercial Loan Department between First National and AmSouth, I don't have any problem with that. But I continue to have a problem with proper procedures. I mean, I think you could ask what kind of procedures, if any, were in place. But you are making an assumption in the question of some sort of proper procedure being there. And I don't think Mr. Jones knows what procedure, if any, was in place. And if he wants to tell you what officers were overlapped, I don't have a problem with that. But I think you are asking—your question calls for speculation and it has an implied assumption that there was some procedure in place. And Mr. Jones doesn't have any way of knowing that.

A. You'd like to know the name of officers that I think were employed by First National Bank as of the date of the loan?

BY MR. WATTERS:

Q. Yes, sir, who could testify as to proper procedure regarding the approval of such loans. [11] A. It

would only be speculation on my part to give you the name of any officer, because I am not aware of their employment date or, you know, who was there at that time.

Q. Who at the bank has records reflecting the officers who were there and could show that these officers were in a position to know the procedures at First National Bank? A. The only area that I would know of that would have information about employment dates and so forth would be the personnel department.

Q. Can you yourself testify regarding GULF ALLIANCE's connection with the First National Bank of Mobile?

MS. MILLER: Wait a minute. That's one of the things that we objected to in our objection and motion for a protective order. And I am instructing the witness not to answer since the Court hasn't ruled on that.

BY MR. WATTERS:

Q. Can you yourself testify regarding the GRAND ALLIANCE's connection with First National Bank of Mobile at the time that the loan was made to John Maddox?

MS. MILLER: Wait a minute. Same objection, plus I don't know what you mean by the GRAND [12] ALLIANCE as a boat. I don't know what kind of connection a boat can have with a bank.

MR. ERWIN: The GRAND ALLIANCE is the subject matter of this entire litigation, if nobody has told you.

MS. MILLER: Well, the question doesn't make any sense; how can a boat have a relationship with a bank?

BY MR. WATTERS:

Q. Can you answer the question? A. No.

MS. MILLER: But tell him whether you can't answer it because you don't have knowledge or you can't answer it because it doesn't make any sense to you, because I would like that to be on the record.

Do you understand what I mean?

A. Well first of all, yeah, I don't really understand what relationship you would be talking about, okay; so I can't answer it because of that. And secondly, I don't think I have any specific knowledge, you know, of anything about the GRAND ALLIANCE.

BY MR. WATTERS:

[13] Q. Are you aware that the loan made the subject matter of this lawsuit was secured by the vessel GRAND ALLIANCE? A. I am aware of that.

Q. And did the bank have any type connection with the vessel, such as prior loans on the vessel or lending of money for the building of the vessel, or anything like that? A. I am not aware of any prior connection.

Q. You are not aware of or was there, in fact, a connection? A. I am not aware of any prior connection.

Q. Who at the bank - at AmSouth Bank - could tell of any previous connections? A. I would not know.

Q. Do you know the names of the members of the Loan Committee at First National Bank of Mobile at the time the loan was actually made? A. No, I do not.

Q. Do you know whether or not a loan of that size to John Maddox required full Board approval? A. I do not.

Q. Do you know the names of the Board of Directors at that time? A. I do not.

[14] Q. Do you know the names of any of the loan officers at First National Bank at that time? A. I do not.

Q. Do you know whether any of those persons are still in the employ of AmSouth Bank at this time?

MS. MILLER: I object to the question. He just said he didn't know the names; how can he know if they are still employed.

BY MR. WATTERS:

Q. Are there any written records relating to the loan that have not been produced that are being claimed as attorney/client privilege or work product or any other type of privilege and just not being produced at this time?

MS. MILLER: I will answer that because I am the one who went through the file. And the only documents that have not been produced out of AmSouth's file in regard to the loan of John Maddox are correspondence between the bank and Armbrecht, Jackson and DeMouy in regard to the collection of the indebtedness in this lawsuit.

BY MR. WATTERS:

Q. Has the bank produced copies of the minutes of the meeting regarding the approval of the loan; of the Loan [15] Committee or the Board of Directors? A. I don't have copies of all the documents that were submitted to you, so you would have to, you know, show me . . .

Q. Were there, in fact, any minutes of the meetings kept of the Loan Committee of the First National Bank or the Board of Directors of First National Bank reflecting the loan made to John Maddox?

MS. MILLER: If you know.

A. I don't know.

BY MR. WATTERS:

Q. Who would have any records reflecting the connection between the First National Bank of Mobile and the builder of the vessel GRAND ALLIANCE? A. I don't know.

Q. Who at the AmSouth Bank would have any records reflecting the making of a loan to Ronald Slepian for the building of a similar vessel such as the GRAND ALLIANCE?

MS. MILLER: I am going to object to that question and instruct the witness not to answer, because it has been the subject of our objection and motion for protective order on which the Court has not ruled.

MR. WATTERS: We are not concluding the [16] deposition. We are just suspending it so we can file the appropriate motions in Court, as we are objecting to this officer being produced for this deposition as he has no knowledge on the subject matter being questioned about.

MS. MILLER: For the record and before you stop typing, you are dealing with—he has got as much knowledge as anybody at that bank does about this file because it is a First National loan. And we have given you the documents and you can go from there. And you can file all the motions you want.

(DEPOSITION ADJOURNED)

.....

Alan A. Jones

APPENDIX M

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
SOUTHERN DIVISION

CIVIL ACTION NUMBER:
87-0265-C

AMSOUTH BANK, N.A.,
Plaintiff,

versus

JOHN E. MADDOX,
Defendant.

The testimony of JOHN EDWARD MADDOX, taken at the law offices of Messrs. Armbrecht, Jackson, DeMouy, Crowe, Holmes & Reeves, 1300 AmSouth Center, Mobile, Alabama, on the 30th day of December, 1987, commencing at approximately 9:00 o'clock a.m.

* * *

[53] A. They said it was, sir.

Q. Do you have any doubts about that? A. Yes, sir.

Q. You have doubts that it was new? A. Well, when I bought the boat, sir, I thought really deep down in my mind before I realized what was happening that the boat was going to be built and I could see the construction. And the boat was already working in Mexico,

and it was already under Mr. Terrell's supervision, which I didn't know anything about. Mr. Slepian set that up also, sir.

Q. Well, you bought the boat with the loan proceeds, the one million one hundred seventy thousand dollars? A. Yes, sir.

Q. Now, when did you learn that the boat was shrimping in Mexico?

MR. ERWIN: I don't believe there was any statement that it was shrimping.

BY MR. HOLMES:

Q. Didn't you say something about the boat working? A. They told me.

Q. Who is, "they"?

* * *

* * * [56] note that didn't provide for attorney's fees to be paid if you defaulted; if they had to collect it? A. I don't know, sir.

Q. Now, you say in here, starting on page five, paragraph "f", that your attorneys were simultaneously negotiating for the purchase of a similar motor vessel for their own investment from plaintiff's customer, Bender Shipbuilding. Do you see that? A. Yes, sir.

Q. All right. What are you referring to there? A. I was referring to Mr. Ronald P. Slepian and Ms. Shirley Justice. They had bought a boat after I had purchased the boat.

Q. All right. When did Mr. Slepian and Ms. Justice buy a boat? A. I would say, sir, two to three months, or maybe a little bit longer after I had gotten one.

Q. All right. You got yours in December of '81? A. Yes, sir.

Q. When did you learn that Mr. Slepian and Shirley Justice had bought a similar boat? A. Approximately two to three months after I purchased one.

* * *

* * * [94] AmSouth was making the loan to you primarily to accommodate a major customer.

What is the basis for you to say that First National was making the loan to you to accommodate Bender? A. Well, hasn't AmSouth made loans to Bender Shipyard? Bender got sued now, or went into bankruptcy—it was in the paper—through AmSouth.

Q. Assuming AmSouth did make loans to Bender, what does that have to do with your loan? A. I don't really thoroughly understand your question; where you are coming from.

Q. Well, you allege here that AmSouth was making the loan—or that First National was making the loan to you primarily to accommodate Bender. Do you have any facts to support that allegation? A. No, ma'am.

Q. Do you have any basis at all for that allegation? A. Just hearsay.

Q. What hearsay are you talking about? A. Well, if it's not a fact, what would you call it; propaganda, or just hearsay?

Q. No. What I am asking you is, when you say, "hearsay," did you just hear a rumor?

* * *

* * * [101] Bender had an agreement pursuant to which Bender would hold First National harmless from any loss in connection with your loan. What is the basis of that allegation? A. I don't really understand it, to be honest with you.

Q. You don't know what that is? Have you heard any rumors or have some information about an alleged agreement between First National and Bender that had something to do with your boat? A. Yes, ma'am. I heard something more or less what you call street talk.

Q. What was that? A. Well, getting back like we was talking about a little while ago, that more or less Bender was working with the bank, or with a bank official to sell me the boat, and that's the main reason why Mr. Ronald P. Slepian bought a boat; to get a cheaper loan for his, because he got my loan through, and I never should have gotten a loan, because if you get an appraisal of my property and minerals, it ain't nothing like what is on the piece of paper. It was appraised too high at the time. Mr. Slepian handled all of these appraisals, to be honest with you, and everything else. He handled the whole deal. All he said was, "sign, * * *.

* * *

* * * [106] on December 31st, 1981.

BY MS. MILLER:

Q. Mr. Maddox, in March of '87 you found a buyer for the GRAND ALLIANCE, didn't you? A. Yes, ma'am.

Q. And that was Mr. Landry? A. Yes, ma'am.

Q. And you sold the boat for one hundred forty-five thousand dollars? A. Yes, ma'am.

Q. The boat was actually sold after the lawsuit had been initiated, wasn't it? A. I don't know. I don't know if it had started or what, ma'am.

Q. How many months before you actually closed the loan had you been talking to Mr. Slepian about buying this boat? A. I hadn't talked to him any about buying a boat. He brought it up.

Q. When did he first bring it up? A. I would say approximately a month before the time—I had meetings at different times. He would always call you in to, maybe, charge you for talking. When you left [107] there you didn't know no more than when you went in there.

Q. Had you talked to anybody about going into the boat business before Mr. Slepian brought it up? A. No, ma'am. I had no knowledge of boats until then.

Q. Mr. Maddox, is it correct that you don't have anything other than hearsay and rumors to base your allegations on in your affirmative defenses about First National and AmSouth?

MR. WATTERS: Object to the form.

BY MS. MILLER:

Q. And specifically, I am talking about the allegations about Bender and your attorneys? A. No, ma'am.

Q. Mr. Maddox, you allege in your affirmative defenses that plaintiff—and I am assuming you mean AmSouth when you say this—it has got, "plaintiff now seeks to destroy the defendant financially." Are you referring to AmSouth? A. Yes, ma'am.

Q. What is the basis of that allegation? A. The basis is we tried to negotiate—that means * * *.

* * *